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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,966	01/28/2002	Krag C. Smith	269-101P-CIP	6702

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EXAMINER

FISCHER, JUSTIN R

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 09/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/055,966

Applicant(s)

SMITH ET AL.

Examiner

Justin R Fischer

Art Unit

1733

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1, 2 and 4-45Claim(s) withdrawn from consideration: 3

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 5: Applicant's primary argument for each rejection centers around the failure of each reference to expressly teach a non-repeating colored pattern on at least 25% of the tire outer surface. However, as set forth in the Final Rejection, such a design would have been obvious in light of the entire disclosure of each reference and in light of the fact that the courts have recognized that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art (In re Seid, 161 F.2d 229, 73 USPQ 431 (CCPA 1947)). In this instance, the claim limitation specifying a region of at least equal to 25% of the tire outer surface is seen to constitute an aesthetic design choice that does not contribute to the mechanical functioning of the tire. Additionally, it is believed that the references do in fact suggest a tire construction in which at least 25% of the tire outer surface is provided with a non-repeating colored pattern, wherein a pattern is defined as an artistic design, as set forth below:

- Sieve-Korte (Page 1, Paragraphs 10 and 11): it is emphasized that the reference further suggests that at least one part of the tire (e.g. sidewall or tread) may be made of a colored rubber- for example, if the sidewall is completely colored, the outer surface of the tire would contain a thick, colored stripe (seen to constitute a non-repeating colored pattern in that only a single stripe is present).
- Nichols (Column 3, Lines 5-15): in an analogous manner to Sieve-Korte, the tire would contain a thick, colored stripe over a significant portion of the tire outer surface.

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- Beers (Abstract): reference discloses that the side surfaces (sidewall) and/or tread surface are colored- in the instances where only the sidewall or tread are covered, the tire would contain a thick, colored stripe over at least 24% of the tire outer surface.
- Creasey (Column 2, Lines 5-20): reference teaches that the wear indicator, which is colored, can be the tread contact rubber or a separate rubber layer arranged within the crown region- in the first instance, a tire is formed with a thick, colored stripe over the entire ground contact region of the tread.



Justin Fischer

September 7, 2004



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